

12-123 HORNE V. DEPARTMENT OF AGRICULTURE

DECISION BELOW: 673 F.3d 1071

LOWER COURT CASE NUMBER: 10-15270

QUESTION PRESENTED:

Under federal regulations, a "handler" of raisins must turn over a percentage of his raisin crop to a federal entity in order to sell the remainder on the open market -often in exchange for no payment or payment below the cost of raisin production. For the 2003 and 2004 crop years, the federal government brought an enforcement action against petitioners, seeking to recover the monetary value of raisins they did not turn over to the government. Petitioners raised the Takings Clause as a defense. The Ninth Circuit initially rejected petitioners' takings defense on the merits, but on Petition for Rehearing vacated its prior merits opinion and replaced it with an opinion dismissing the takings defense for lack of jurisdiction. The Questions Presented are:

1. Whether the Ninth Circuit erred in holding, contrary to the decisions of five other Circuit Courts of Appeals, that a party may not raise the Takings Clause as a defense to a "direct transfer of funds mandated by the Government," *Eastern Enterprises v. Apfel*, 524 U.S. 498, 521 (1998) (plurality), but instead must pay the money and then bring a separate, later claim requesting reimbursement of the money under the Tucker Act in the Court of Federal Claims.

2. Whether the Ninth Circuit erred in holding, contrary to a decision of the Federal Circuit, that it lacked jurisdiction over petitioners' takings defense, even though petitioners, as "handlers" of raisins under the Raisin Marketing Order, are statutorily required under 7 U.S.C. § 608c(15) to exhaust all claims and defenses in administrative proceedings before the United States Department of Agriculture, with exclusive jurisdiction for review in federal district court.

CERT. GRANTED 11/20/2012